

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION I

CACR 06-872

MAY 2, 2007

JEIGHMICHAEL S. DAVIS
APPELLANT

APPEAL FROM THE BRADLEY
COUNTY CIRCUIT COURT
[NO. CR-05-53-1]

V.

HONORABLE SAMUEL B. POPE,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Jeighmichael Davis appeals his conviction for robbery of the “Big Jax” convenience store in Warren, Arkansas, as found by a jury in Bradley County Circuit Court. Appellant’s sole argument on appeal is that the trial court abused its discretion by allowing the State to elicit testimony relevant to another robbery committed at a Warren, Arkansas, Pizza Hut restaurant, pursuant to Ark. R. Evid. 404(b). After considering appellant’s argument, we affirm his conviction.

The evidence was admitted by the trial court pursuant to Ark. R. Evid. 404(b), which states:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

The admission or rejection of evidence under Rule 404(b) is left to the sound discretion of the trial court and will not be disturbed absent a manifest abuse of discretion. *Hernandez v.*

State, 331 Ark. 301, 962 S.W.2d 756 (1998). The list of exceptions set out in the rule is exemplary and not exhaustive. *White v. State*, 290 Ark. 130, 717 S.W.2d 784 (1986). Evidence is admissible pursuant to Rule 404(b) if it is independently relevant to the main issue, relevant in the sense of tending to prove some material point rather than merely to prove that the defendant is a criminal or a bad person. *Mosley v. State*, 325 Ark. 469, 929 S.W.2d 693 (1996).

We must examine the salient events to apply the law to this appeal. Appellant was convicted of robbing the Pizza Hut in Warren on the evening of March 18, 2005. Appellant was facing trial the following day in the same circuit court for charges of robbing the Big Jax store, alleged to have been committed on the evening of March 20, 2005. The State sought to introduce evidence relevant to Pizza Hut robbery because of the similarity in method and disguise, the close proximity in time, and the close physical proximity of the crimes. Defense counsel objected, noting the requirement that there be independent relevance, and furthermore, asserting that any probative value was outweighed by unfair prejudice.

The prosecutor explained that the restaurant robbery was committed by a person dressed in dark clothing and who wore a distinctive mask. The restaurant robber came in near closing time, brandished a gun, demanded cash from the register, and left on foot. The State wanted to have a restaurant employee testify about the robbery. The trial judge asked for more clarification about the similarities of the crimes. The prosecutor responded that the Big Jax robbery was committed two nights later and within a mile, the perpetrator came in near closing time, he wore dark clothing and a mask, demanded money from the register

while holding a gun on the store's clerk, and left on foot. The defense argued that this was not proper 404(b) evidence because it did not help prove the convenience store robbery, but rather made appellant appear to be a bad person who must have acted in conformity. The trial judge, commenting that the State's case was strong and probably did not need the earlier robbery evidence, nonetheless allowed the evidence. The judge gave the jury a limiting instruction at each interval where the Pizza Hut robbery was discussed.

The evidence at trial included the testimony of appellant's mother, who had notified the police when she heard about the robberies. She said that her son had a mask at her house on his bed, which she gave to the police. A search of the house led to the retrieval of black trousers and a black sweatshirt from appellant's bedroom. An investigating officer testified that he interviewed appellant on the morning of March 23, 2005. Appellant waived his rights and freely gave a statement. Appellant was confronted with the mask, he admitted it was his, he explained that he was having a hard time with a drug problem and with no job, and he admitted to committing both robberies. Appellant gave specific details of each crime. He stated that he went into the Pizza Hut, wearing the mask, and demanded the employee to empty the cash register. He was given about \$250 and ran out of the store. Appellant said that as to the Big Jax store, he stood outside waiting for business to slow, then put the mask on and entered, noticing the clerk talking on the phone behind the register. He said that he brandished the gun at her and demanded all the money, but that she said "call the police" to the person on the phone, which unnerved him. He did not get any money from her before running out of the store. Appellant told the officer that he acquired the .38 caliber handgun

from Undra Gaines. Appellant said that there were four bullets in the gun, and he thought it was at his mother's house.

More testimony relevant to appellant's objection came from Robin Hayes, one employee of Pizza Hut. She stated that it was near closing time when the robber entered. She saw him accosting the male employee in front of the register, and she observed that the robber had on a mask and dark clothing. The judge instructed the jury to consider this testimony only as evidence of motive, preparation, plan, and identity.

Appellant argues that this evidentiary ruling constitutes reversible error because the evidence was unnecessary in light of his confession, demonstrating that it was not independently relevant and certainly more prejudicial than probative. Appellant does not persuade. Even if the trial court abused its discretion by allowing evidence relating to the Pizza Hut robbery pursuant to Ark. R. Evid. 404(b), any such error would be harmless.

Appellant gave a statement to the police admitting that he was the person who committed the Big Jax robbery, and his mother corroborated that confession by her presentation of the mask to the police and by her allowing them to search for incriminating items in his bedroom in her house. Appellant in his brief notes that the State did not need any further evidence establishing the identity of the perpetrator because appellant admitted his guilt. *See Otis v. State*, __ Ark. __, __ S.W.3d __ (Nov. 17, 2005) (evidence of Otis's guilt, in the form of his properly admitted confessions, was overwhelming, so any error that may have arisen from the introduction of the plaque was harmless); *Barrett v. State*, 354 Ark. 187, 119 S.W.3d 485 (2003) (even when a trial court errs in admitting evidence, when the

evidence of guilt is overwhelming and the error is slight, we can declare that the error was harmless and affirm the conviction); *Cobb v. State*, 340 Ark. 240, 12 S.W.3d 195 (2000) (any error in admitting allegedly irrelevant testimony that the defendant loved music was harmless where the defendant admitted killing the victim and evidence supported the conviction).

Appellant's conviction is affirmed.

GLOVER and HEFFLEY, JJ., agree.